Some carriers have a practice of assigning local numbers to customers when the customer is not physically located in the local area. This practice is known as assigning a "Virtual NXX." A Virtual NXX is an exchange code assigned to end users physically located in exchanges other than the one to which the code was assigned. The issue that has arisen in this arbitration is how such Virtual NXX traffic should be treated when it is destined for an ISP that is physically located outside the local exchange area but has been assigned a local number. The RLECs believe the answer is clear that Virtual NXX traffic should be treated the same regardless of whether it is destined for an ISP or some other type of business.

There is clear precedent in the Commission's prior orders with respect to the practice of assigning Virtual NXX's, both with respect to ISPs and to other customers. This Commission has also ruled in two separate orders that the physical location of the customer determines the proper jurisdiction of calls. In the *Adelphia Arbitration Order*,[31] the Commission concluded that reciprocal compensation should be based on the physical location of the calling and called parties, not the NXX codes of those parties. In the *US LEC Arbitration Order*,[32] the Commission held that:

> This Commission has already addressed this issue in a prior arbitration and that decision supports Verizon's position in that this Commission held

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2004). While the D.C. Circuit Court of Appeals remanded the *ISP Remand Order* on the grounds that the FCC had failed to provide an adequate legal basis for the rules it had adopted, the Court did not vacate the order and observed that there may be other legal bases for adopting the rules. *See WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002). The FCC's interim rules remain in effect pending review on remand.

[31] *Petition of Adelphia Business Solutions of South Carolina, Inc. for Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252 (b) of the Communications Act of 1934, As Amended by the Telecommunications Act of 1996*, Docket No. 200-516-C, Order on Arbitration (January 16, 2001) ("*Adelphia Arbitration Order*").

[32] *Petition Of US LEC Of South Carolina, Inc. For Arbitration With Verizon South, Inc., Pursuant To 47 U.S.C. 252(b) Of The Communications Act Of 1934, As Amended By The Telecommunications Act Of 1996*, Docket No. 2002-181-C, Order No. 2002-619 (August 30, 2002) ("*US LEC Arbitration Order*").

> that "reciprocal compensation is not due to calls placed to 'virtual NXX' numbers as the calls do not terminate within the same local calling area in which the call originated." *The Commission squarely held that compensation for traffic depends on the end points of the call – that is, where it physically originates and terminates.* In rejecting the claim that "the local nature of a call is determined based upon the NXX of the originated and terminating number," the Commission noted that, "[w]hile the NXX code of the terminating point is associated with the same local service area as the originating point, the actual or physical termination point of a typical call to a 'virtual NXX' number is not in the same local service area as the originating point of the call." (emphasis added)[33]

MCI argues that the *Adelphia* and *US LEC* Orders "should no longer be controlling, at least with regard to ISP-bound traffic."[34] We see no reason to deviate from our prior rulings. Virtual NXX for dial-up calls to ISPs is not "ISP-bound Traffic," as MCI argues, but is interexchange traffic that is subject to the appropriate access charges. As we have found in prior orders, the physical location of the calling and called parties determines the proper treatment of the call.[35] In the above example, if the customer is calling AOL in California, it is a long distance call. The fact that a CLEC attempts to have those calls rated as local calls by assigning a local number to that customer (Virtual NXX) does not make them local calls, because the calls are still terminating in California.

Nothing in the FCC's rules or orders indicates anything to the contrary. The ISP intercarrier compensation regime established in the FCC's *ISP Remand Order*[36] does not apply to Virtual NXX or other interexchange calls delivered to ISPs, as MCI contends.

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[33] *Id.* at 22 (emphasis added).
[34] MCI Petition at p. 18.
[35] *Id.*
[36] Order on Remand and Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic, 16 FCC Rcd 9151 (2001) ("*ISP Remand Order*").

The United States Court of Appeals for the District of Columbia Circuit, in reviewing the FCC's order, clearly recognized that the "interim [compensation] provisions devised by the [FCC]" apply only to "calls made to [ISPs] *located within the caller's local calling area*."[37] In other words, the ISP intercarrier compensation regime applies only to calls that would have been subject to reciprocal compensation if made to an end-user customer, rather than an ISP.

The D.C. Circuit Court's understanding of the scope of the intercarrier compensation obligation established in the *ISP Remand Order* is correct. The question before the FCC with respect to ISP-bound traffic has always been whether calls to an ISP physically located in the same local calling area as the calling party are to be treated the same as calls to a local business. Thus, in the *ISP Declaratory Ruling*,[38] the FCC rejected CLECs' arguments that a call to an ISP "terminate[s] at the ISP's local server" and "ends at the ISP's local premises." And, in the *ISP Remand Order*, the FCC recognized that it was addressing the compensation due for "the delivery of calls from one LEC's end-user customer to an ISP in the same local calling area that is served by a competing LEC."[39]

Issue 10(b) involves whether or not the jurisdiction of the call should be determined based on the physical locations of the originating and terminating customers. This is the long-established and settled rule for determining the proper treatment and rating of calls. Both the FCC and this Commission have determined that the call jurisdiction is based on the physical location of the end user customers. The FCC has

[37] *WorldCom, Inc. v. FCC*, 288 F.3d 429, 430 (D.C. Circuit 2002).
[38] Declaratory Ruling and Notice of Proposed Rulemaking, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic, 14 FCC Rcd 3689 (1999) ("*ISP Declaratory Ruling*"), at ¶¶ 12-15.
[39] *ISP Remand Order* at ¶¶ 10, 13.

determined that the end-user customers involved in a telecommunications transmission must be physically located within the "local area" in order for the FCC to conclude that such traffic is "local."[40]

As discussed above, we have previously ruled in two separate orders that the physical location of the customer determines the proper jurisdiction of calls. In the *Adelphia Arbitration Order* and again in the *US LEC Arbitration Order*, we concluded that reciprocal compensation should be based on the physical location of the calling and called parties, not the NXX codes of those parties. Furthermore, in the *US LEC Arbitration Order*, we specifically recognized and discussed the application of this rule to Virtual NXX traffic destined for ISPs outside the local calling area.[41] We see no reason to modify or deviate from our prior precedent.

Issue 13 relates to whether there should be reciprocal compensation paid for out-of-balance traffic. The RLECs have proposed that there should not be a per-minute compensation rate for the exchange of IntraLATA Traffic, but that compensation for IntraLATA Traffic should be in the form of the mutual exchange of services provided by the other Party. This is because the traffic should be roughly balanced if the parties are treating the traffic in an appropriate manner, as described above. However, it is obvious from MCI's position with respect to ISP-bound Virtual NXX traffic that it intends to provide dial-up service to ISPs and believes that such dial-up traffic using Virtual NXX should be subject to reciprocal compensation. As stated above, such Virtual NXX traffic is not "ISP-bound Traffic" under the FCC's *ISP Remand Order* and therefore is not

[40] *See* Order *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 F.C.C.R. 15499 (1996) at ¶ 1043.
[41] *See US LEC Arbitration Order* at pp. 25-27.

subject to reciprocal compensation. The only traffic that would be subject to reciprocal compensation is the remaining IntraLATA Traffic which, in the absence of regulatory arbitrage, should be roughly balanced.

Moreover, MCI is a CLEC and can change its business plan at any time to serve a certain sub-set of end users to enhance its payments from interconnecting carriers. MCI can target a type of customer like an ISP, thereby potentially generating out-of-balance traffic. RLECs do not have the flexibility to choose certain types of customers, as the RLECs must serve any end user customer within their respective service areas who requests service.

For the reasons stated above, we adopt the RLECs' proposed language relating to ISP-Bound Traffic and Virtual NXX issues, as follows:

GT&C, Glossary §§ 2.25, 2.28. 2.34:

> INTRALATA TRAFFIC Telecommunications traffic that originates and terminates in the same LATA, including but not limited to IntraLATA toll, ISP bound and Local/EAS.
>
> ISP-BOUND TRAFFIC
> ISP-Bound Traffic means traffic that originates from or is directed, either directly or indirectly, to or through an information service provider or Internet service provider (ISP) who is physically located in an exchange within the Local/EAS area of the originating End User Customer. Traffic originated from, directed to or through an ISP physically located outside the originating End User Customer's Local/EAS area will be considered switched toll traffic and subject to access charges.
>
> LOCAL/EAS TRAFFIC
> Any call that originates from an End User Customer physically located in one exchange and terminates to an End User Customer physically located in either the same exchange or other mandatory local calling area associated with the originating End User Customer's exchange as defined and specified in ILEC's tariff.

TOPIC 3: RECIPROCAL COMPENSATION RATE (Issue 21)

ISSUE 21: What should the reciprocal compensation rate be for out-of-balance Local/EAS or ISP-bound traffic?

MCI's Position:

MCI has proposed the rate set forth in the FCC's order on CLEC reciprocal compensation rates.

RLECs' Position:

As discussed in Issues 8 and 13, there is not a need for a reciprocal compensation rate. In fact, during the entire course of negotiations the Parties never discussed what would be the appropriate reciprocal compensation rate. All of the discussion surrounded if there should even be reciprocal compensation. This issue has not been discussed in negotiations and is not ripe for arbitration.

Discussion:

The issue is moot because of our holding above. We therefore decline to address it.

TOPIC 4: CALLING PARTY IDENTIFICATION (CPN AND JIP) (Issues 3, 14, 16)

Issues 3, 14, and 16 will be discussed together.

ISSUE 3: Should companies be required to provide JIP (Jurisdictional Indicator Parameter) information?

MCI's Position:

No. This is not a mandatory field. No other ILEC has asked that MCI provide this

information, let alone on 90% of calls. The National Information Industry Forum is still working on rules for carriers choosing to populate this field for VoIP traffic and wireless carriers. The revised instructions for landline carriers was only released in December. MCI does not oppose putting "OR" as a condition of providing this or CPN on calls. But there is only a legal mandate to provide CPN currently.

RLECs' Position:

Yes. RLECs should have the ability to determine the proper jurisdiction of the calls delivered to their switches. Jurisdictional Indicator Parameter (JIP) is one of the pieces of information that is available and technically feasible which supports the RLECs ability to establish the proper jurisdiction of calls terminating to their networks. The NIIF strongly recommends that JIP be populated for both wireline and wireless carriers where technologically possible.

ISSUE 14: Should Parties be required to provide (a) CPN and JIP and (b) and pay access charges on all unidentified traffic?

MCI's Position:

MCI (a) is willing to provide CPN or JIP, but not both as the latter is an optional SS7 parameter. (No other ILEC has proposed that MCI must provide JIP) and (b) believes that all unidentified traffic should be priced at same ratio as identified traffic. A price penalty should not be applied for something MCI does not control. MCI is open to audits and studies by either Party if one or the other thinks the 10% or more of traffic missing CPN information is an effort to avoid access charges.

RLECs' Position:

Yes. In order to properly identify the jurisdiction of the traffic exchanged between the parties, the parties should be required to provide CPN and JIP. The parties should have an incentive to properly identify the jurisdiction of the traffic exchanged between them.

ISSUE 16: Should Parties have to provide the specified signaling parameters on all calls?

MCI's Position:

No. Percentages for CPN have been set above and JIP is not mandatory. MCI will agree not to alter parameters received from others, but it cannot commit to more than 90% CPN being provided.

RLECs' Position:

Yes. All signaling parameters are to be included in the signaling information, whatever the source.

Discussion:

There are three inter-related issues regarding calling party identification. The first issue is whether the parties should be required to provide a "Jurisdictional Indicator Parameter" or JIP in their call signaling information. From the RLECs' standpoint, JIP is a critical piece of information that helps the RLEC determine the physical location of the calling party and, therefore, the jurisdiction of a call that is sent to the RLEC for termination.[42] The RLECs are willing and able to provide JIP on all calls sent to MCI

[42] TR at 79.

and believe there is no reason MCI cannot do the same.[43]

The jurisdiction of the call is important because that is what determines the appropriate intercarrier compensation exchanged between the Parties for the exchanged traffic. Local calls, intrastate interLATA, and interstate calls are all treated differently for compensation purposes. Local calls are subject to reciprocal compensation, bill and keep, or an agreement to mutually perform termination services. Intrastate interLATA calls are subject to the appropriate South Carolina intrastate switched access rates, which are approximately $0.01 per minute of use.[44] Interstate calls are subject to the appropriate interstate switched access charges, which range from approximately $0.015 to $0.025 per minute of use.[45]

RLECs have discovered that some traffic that is intrastate or interstate toll is entering their networks disguised as local traffic in order for carriers to avoid the payment of access charges.[46] Based on investigations by several industry groups, including a special Phantom Traffic Conference held by the National Exchange Carriers Association in April 2004, the traffic can be improperly identified using several methods.

One method for misrepresenting the traffic is to substitute a local calling party number ("CPN") for the actual CPN of the call. Because carriers have the ability to substitute CPN, other methods in addition to the CPN are required to properly identify the true jurisdiction of the call.[47]

Toll calls are also incorrectly identified by CPN when telephone numbers are

[43] TR at 79.
[44] TR at 80.
[45] TR at 80.
[46] TR at 80.
[47] TR at 82.

assigned to customers that are not physically located in the rate center where the number is assigned. In the case of a Virtual NXX, telephone numbers are obtained in one rate center and assigned to customers in another rate center or even another state. When a South Carolina telephone 803-666 number is assigned to a customer physically located in San Francisco, the CPN will accurately show 803-666-2222, but the call is in fact an interstate call. Additional information is required to determine if that call is local or toll.[48]

The JIP is a six (6) digit NPA-NXX field in the SS7 message that identifies the rate center or switch from which the call was originated. In the example of the customer located in San Francisco calling to South Carolina, the CPN would show the 803-666-2222 but the JIP would be populated with a San Francisco NPA-NXX, for example 415-454. The RLECs use both the CPN and the JIP to determine the jurisdiction of the call, because they cannot accurately determine the jurisdiction of the call using only of these parameters standing alone.

The JIP still helps identify the jurisdiction of the call even in instances where the switch covers a large geographic area. At minimum, the JIP helps identify calls that are originated outside the regional switch. Therefore the call originated in San Francisco would be identified as a toll call.[49]

The Alliance for Telecommunications Industry Solution's ("ATIS") Ordering and Billing Forum ("OBF")[50] has addressed JIP over the last several years. In December of

[48] TR at 82.
[49] TR at 83.
[50] ATIS is a United States based body that is committed to rapidly developing and promoting technical and operations standards for the communications and related information technologies industry worldwide

2004, ATIS adopted seven rules for populating JIP. Although ATIS did not make JIP a mandatory field, it strongly recommended the use of JIP by companies to assist with identifying the true jurisdiction of calls. Two of the seven rules address the issue of inclusion of JIP:

Rule 1. JIP should be populated in the Initial Address Messages (IAMs) of all wireline and wireless originating calls where technically feasible.

Rule 3. The Network Interconnection Interoperability Forum (NIIF) does not recommend proposing that the JIP parameter be mandatory since calls missing any mandatory parameter will be aborted. However the NIIF strongly recommends that the JIP be populated on all calls where technologically possible.

The NIIF rules also address the situation noted by MCI where a switch serves a regional area:

Rule 4. Where technically feasible if the origination switch or mobile switching center ("MSC") serves multiple states/LATAs, then the switch should support multiple JIPs such that the JIP used for a given call can be populated with an NPA-NXX that is specific to both the switch as well as the state and LATA of the caller.

If the JIP cannot be populated at the state and LATA level, the JIP should be populated with NPA-NXX specific to the originated switch or MSC where it is technically feasible.

We note that Rule 3 states that NIIF does not recommend proposing that the JIP parameter be mandatory. Second, Rule 4 discusses the use of JIP "where it is technically feasible."

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using a pragmatic, flexible and open approach. Over 1,100 industry professionals from more than 350 communications companies actively participate in ATIS' 22 industry committees and incubator solutions programs. These committees include National Interconnection Inter-operability Forum (NIIF), Industry Number Committee (INC) which oversees North American Number Committee (NANC), and the Ordering and Billing Forum (OBF). ATIS develops standards and solutions addressing a wide range of industry issues in a manner that allocates and coordinates industry resources and produces the greatest return for communications companies. ATIS creates solutions that support the rollout of new products and services into the communications marketplace. Its standardization activities for wireless and wireline networks include interconnection standards, number portability, improved data transmission, Internet telephony, toll-free access, telecom fraud, and order and billing issues, among others. ATIS is accredited by the American National Standards Institute (ANSI).

MCI states that its Class 5 switches, i.e. those used for local service, are in Atlanta and Charlotte. Each RLEC will be assigned to one or the other switch.[51] Such an arrangement is not unusual for CLECs, which use a limited number of switches to cover multiple ILEC serving areas, crossing state and LATA boundaries.[52] Under this arrangement, a call originating in Columbia and ending in Columbia would produce a JIP that would indicate the call is a toll call from Atlanta/Charlotte. Obviously, the call should be rated and billed to the originating end user as a local call.[53]

MCI states that it will pass JIP, but it will only be the JIP of the MCI switch, which will limit the use of JIP to accurately rate traffic. MCI states that it will not and cannot pass a unique JIP for every LATA served by its switch as the RLECs request.[54] Further, MCI notes that a unique JIP for every LATA is not required. MCI notes that a requirement that CLECs provide a unique JIP for every local calling area served by a CLEC switch would require the scope of the CLEC switch to be limited because separate partitions would have to be created for each JIP and separate "look-up" tables would have to be managed and created for each RLEC local calling area. According to MCI, this would create significant additional equipment, software and administrative cost and would create network inefficiency, reducing the economies of scale available to CLECs for switching. Further, MCI states that a requirement that CLECs provide RLECs with a unique JIP for every local calling area served by the CLEC switch would cause CLECs to limit the calling area scope of their class 5 switches and to exit certain markets.

[51] TR at 143.
[52] TR at 143-44.
[53] TR at 147.
[54] TR at 90, 147, 149-50, 200-02.

On the other hand, MCI has a DMS switch, and the DMS switch is capable of supporting multiple JIPs.[55] At a minimum the JIP parameter is included with the LNP software if it was not already part of the switch.[56] We find that there is a need for jurisdictional information in addition to the CPN in order to enable the Parties to properly identify the jurisdiction of the call. However, based on MCI's assertions, we also find that providing JIP information may not technically feasible or economical. We, therefore, hold that the Parties should be required to provide both CPN and JIP where it is technologically and economically feasible, as defined by not being a barrier to entry.

Issue 14 relates to the question of traffic that lacks CPN or JIP (as proposed by MCI) or that lacks CPN and JIP (as proposed by the RLECs). MCI proposes that unidentified traffic be treated as having the same jurisdictional ratio as the ratio of the identified traffic. The RLECs agree with this premise, except that if the unidentified traffic exceeds 10% of the total traffic, then the RLECs state that all the unidentified traffic shall be billed at the RLECs' access charge rates.[57] The MCI proposal is reasonable, and we adopt MCI's proposal. Concerns over fraud may be dealt with by the parties through audit provisions and cooperative efforts pursuant to language to which the parties have already agreed.[58]

Issue 16 also relates to whether or not the parties should be required to provide JIP, but involves another issue as well. MCI has proposed language that will enable it to "pass along as received" signaling information it receives from other carriers. According

[55] TR at 89.
[56] TR at 336.
[57] TR at 93, 334.
[58] TR at 152.

to MCI, its proposed language is to be preferred, because no party can guarantee that CPN will exist on all calls. MCI states that it, no differently than other carriers, will have as much control over traffic to and from TWCIS as the RLECs themselves have over traffic to and from their customers.[59]

Again, we would state that the Companies should be required to provide JIP where it is technologically and economically feasible as defined by not being a barrier to entry.

We therefore adopt the following language on these issues:

GT&C, § 9.5:

> The Parties shall each perform traffic recording and identification functions necessary to provide the services contemplated hereunder. Each Party shall calculate terminating duration of minutes used based on standard automatic message accounting records made within each Party's network. The records shall contain the information to properly assess the jurisdiction of the call including ANI or service provider information necessary to identify the originating company, including the JIP and originating signaling information, the provision of the JIP being where it is technologically and economically feasible as defined by not being a barrier to entry. The Parties shall each use commercially reasonable efforts, to provide these records monthly, but in no event later than thirty (30) days after generation of the usage data.

Interconnection Attachment, § 2.7.7:

> The Parties will prorate unidentified traffic by jurisdiction according to the identified traffic. The Parties will coordinate and exchange data as necessary to determine the cause of the CPN or JIP failure (where the provision of JIP was attempted) and to assist its correction.

Interconnection Attachment, § 3.6:

> Signaling Parameters: ILEC and CLEC are required to provide each other with the proper signaling information (e.g. originating accurate Calling

[59] TR at 125, 152-53.

Party Number, JIP [where technologically and economically feasible as defined by not being a barrier to entry)] and destination called party number, etc.) pursuant to 47 C.F.R. § 64.1601, to enable each Party to issue bills in an accurate and timely fashion. All Common Channel Signaling (CCS) signaling parameters will be provided including CPN, JIP (where technologically and economically feasible as defined by not being a barrier to entry), Calling party category, Charge Number, etc. All privacy indicators will be honored.

IV. CONCLUSION.

The Parties are directed to implement the Commission's resolution of the issues addressed in this Order by modifying the language of the Interconnection Agreement to the extent necessary to comply with the rulings and framework established herein. The Parties shall file an Agreement with the Commission within sixty (60) days after receipt of this Order. If the Parties are unable, after good faith efforts, to mutually agree upon language with respect to any of the issues addressed in this Order, at the end of the sixty (60) days, the respective Parties shall file proposed language representing the most recent proposal to the other Party on that issue, and the Commission shall adopt the language that best comports with the Commission's findings in this proceeding.

This Order is enforceable against MCI and the RLECs. RLEC affiliates which are not incumbent local exchange carriers are not bound by this Order. Similarly, MCI affiliates are not bound by this Order. This Commission cannot enforce contractual terms upon an RLEC or MCI affiliate which is not bound by the Act.

This Order shall remain in full force and effect until further Order of the Commission.

IT IS SO ORDERED.

BY ORDER OF THE COMMISSION:

Randy Mitchell, Chairman

ATTEST:

G. O'Neal Hamilton, Vice Chairman

(SEAL)

SPRINT
November 10, 2005

DOCKET NO. 31038

IN RE:	)	
	)	
PETITION OF SPRINT COMMUNICATIONS COMPANY L.P. FOR COMPULSORY ARBITRATION UNDER THE FTA TO ESTABLISH TERMS AND CONDITIONS FOR INTERCONNECTION TERMS WITH BRAZOS TELECOMMUNICATIONS INC.	)	**BEFORE THE**
	)	**PUBLIC UTILITY**
	)	**COMMISSION OF TEXAS**

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RESPONSE OF
SPRINT COMMUNICATIONS COMPANY L.P.

Pursuant to Order No. 3, Sprint Communications Company L.P. ("Sprint") respectfully submits its Response to amicus brief of Consolidated Communications of Texas Company and Consolidated Communications of Fort Bend Company ("Consolidated").

I. INTRODUCTION

The issue before the Public Utilities Commission of Texas ("PUCT") is whether rural subscribers in Texas will have a choice of local voice service providers, or whether one of the last vestiges of monopoly in local voice telephone service will be preserved contrary to the pro-competitive policy of Congress and the state of Texas. It is with this backdrop that Sprint responds to Consolidated.

For its part, Consolidated acknowledges that it took a different approach than other carriers and decided to negotiate with Sprint and indeed Sprint and Consolidated's sister company Illinois Consolidated have entered into an interconnection agreement that looks very similar to the one that has been submitted for arbitration in Texas.[1] In this regard, Sprint remains optimistic that it can finalize an interconnection agreement with Consolidated upon the Commission's resolution of the threshold issues in this proceeding.

[1] See fn 62.

While Consolidated acknowledges that it took a different approach and agreed to negotiate with Sprint and agreed to extend the arbitration window[2], it now contends that this Commission is without jurisdiction to arbitrate the Brazos case and similarly situated actions presumably including Sprint's petitions involving Consolidated. There are a number of reasons why Consolidated is mistaken, including but not limited to the following: First, Sprint and Consolidated have negotiated the majority of the terms of an interconnection agreement. Since Sprint and Consolidated were unable to resolve all of their issues, Sprint filed an arbitration petition according to section 252 of the Telecommunications Act asking the Commission to resolve all open issues according to the procedures outlined in the Act. On this point, the Act is clear that State commissions have been vested with the authority to arbitrate any open issue.[3] Second, and related to the first, once the Commission determines the threshold legal issues, the remaining interconnection issues will be ripe for determination. In this regard, Consolidated's attempt to dismiss this case based on conjecture about the interconnection terms and conditions must be rejected. Third, which is the primary focus of this response, is Consolidated's mistaken belief that Sprint must provide its services directly to end-users to obtain interconnection. Indeed, Consolidated's reliance upon the South Carolina Public Service Commission decision (South Carolina decision) in support of this position is misplaced. As discussed more fully below, the South Carolina decision involved MCI and rural LECs in South Carolina and was limited to the facts and legal arguments presented in that proceeding. Moreover, the South Carolina decision failed to fully analyze the statutory definition of telecommunications carrier as discussed below.

In this case, Consolidated has asserted absolutely no valid legal basis, economic harm, technical problem, or other reason to thwart Sprint's business model with Time Warner Cable ("TWC"). Undoubtedly, Sprint qualifies as a telecommunications carrier eligible to negotiate and

[2] See Exhibit B to Sprint Petition in Docket Nos. 31577 and 31578.
[3] See 47 U.S.C. § 252 (b)(1).

enter into interconnection agreements with Consolidated and carriers similarly situated to Brazos. Consolidated disputes this simple truth with an empty and unsupported argument that it should be forced into interconnection negotiations only with the entity who is directly serving the end user subscribers. This alleged retail/wholesale distinction is a red herring and simply a meager attempt to confuse the issue. As explained below, there is no "retail" requirement under the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (codified at 47 U.S.C. § 151 *et seq.*) (hereinafter, the "Act"). Indeed, Consolidated has not identified a single provision of the Act that explicitly supports its position from either a public policy or a legal perspective. On the other hand, every position Sprint has taken is supported by express language in the Act. Furthermore, Consolidated's assertion ignores that Sprint's network, not TWC's network, will be the entity physically interconnecting with Consolidated. Sprint will provide switching, public switched telephone network ("PSTN") interconnection, numbering resources, administration and porting, domestic and international toll service, operator and directory assistance, and numerous back-office functions, and Sprint's systems will track and pay reciprocal compensation. The only conclusion that can be drawn is that Consolidated and similarly situated companies simply want to delay competition for as long as possible to preserve their market position. The Commission should see through the legal charade and join the other state commissions who have addressed this business model, and who have imposed a duty to interconnect.

II. SUMMARY OF SPRINT'S POSITION

A. Sprint Is A Telecommunications Carrier Within The Meaning Of The Act.

The Act defines "telecommunications carrier" as "any" provider of telecommunications services.[4] And it defines "telecommunication services" as the offering of telecommunications for a fee directly to the public "*or* to such classes of users as to be *effectively available directly to*

[4] 47 U.S.C. §153(44).

the public, regardless of the facilities used." [5] (Emphasis added.) This language plainly encompasses Sprint's offering in Texas. Sprint is working with TWC to provide voice service to the public. Sprint will provide to TWC, among other things, inter-carrier compensation, local and toll service, PSTN interconnection, number assignment and administration functions, number porting, operator and directory assistance, 911 circuit provisioning, 911 database administration, and 911 contract negotiation. This service is "telecommunications service" that is "effectively available directly to the public." Accordingly, Sprint is a "telecommunications carrier" within the meaning of the Act.

B. Sprint Satisfies the Definition of Common Carrier.

Sprint offers its interconnection and other services indifferently to all within the class of users consisting of cable companies and other entities who desire the services and who have comparable "last mile" facilities to the cable companies. Each company may choose to purchase different services or different combinations of services from Sprint; therefore, each company's contract will reflect the pricing, terms, and conditions of the particular circumstances. Each company, however, is offered the same array of Sprint services from which to choose. In addition, Sprint will not alter the content of the voice communications by end users. Accordingly, Sprint satisfies the definition of "common carrier" as that term is described in applicable case law.

C. As A Telecommunications Carrier, Sprint Is Entitled To Interconnection and Other Rights Under the Telecommunications Act.

The Act provides that all telecommunications carriers have a duty to connect "directly or indirectly" with other telecommunications carriers.[6] In addition, the Act imposes on local exchange carriers various obligations, including the duties to provide number portability and dialing parity, and the duty to establish reciprocal compensation arrangements for the transport

[5] 47 U.S.C. § 153(46) (emphasis added).
[6] 47 U.S.C. §251(a).

and termination of telecommunications.[7] Because Sprint is a telecommunications carrier within the meaning of the Act, Sprint is entitled to interconnect, either directly or indirectly, with Brazos and Consolidated, and is entitled to *inter alia* reciprocal compensation, number portability, and dialing parity.

III. ARGUMENT

A. Sprint Has A Right To Interconnect With Consolidated Because Sprint Is Offering Telephone Exchange Service And Exchange Access in a Manner that renders the Service "Effectively Available To The Public."

Although Congress could have limited the definition of telecommunications carriers who are entitled to interconnect to those who provide telecommunications "directly to the public," it chose a broader definition that includes any entity that provides telecommunications "directly to the public, *or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.*" (Emphasis added.) Consolidated and the South Carolina Public Service Commission focus only on the first half of the definition of a telecommunications carrier.

Although Consolidated ignores the latter half of the definition of a telecommunications carrier, Sprint easily qualifies upon application of that language to the facts here. Indeed, these facts are substantially similar to the facts the Illinois Commerce Commission (ICC) considered when it determined that Sprint is a Telecommunications Carrier for purposes of interconnection with rural LECs in Illinois one of which is Consolidated's sister company Consolidated of Illinois. As Sprint has stated in this and the other related proceedings, Sprint will use its facilities and equipment to provide TWC, among other things, PSTN interconnection; switching; number assignment, administration, and porting; operator services; directory assistance and directory assistance call completion; 911 circuits; and 911 database administration. In effect, Sprint will be offering "telephone exchange service," as that term is defined in §153(47) of the

[7] 47 U.S.C. §251(b).

Act:

> Telephone Exchange Service – The term "telephone exchange service" means (A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) *comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.* (emphasis added)

In addition, Sprint clearly will be offering "exchange access," as that term is defined in §153(16) of the Act:

> Exchange Access – The term "exchange access" means the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services.[8]

It is Sprint's "system of switches, transmission equipment, or other facilities" that will make it possible for TWC's subscribers to place and receive telephone calls. Without the services Sprint proposes to provide to TWC, TWC's subscribers could not place or receive any telephone calls that would require access to or from the PSTN. Thus, Sprint's proposed services clearly fall under the latter half of the definition of telephone exchange service noted above. As a result, Sprint is providing telephone exchange service and exchange access service, and it is doing so in a manner that makes those services "effectively available directly to the public."

Section 153(26) of the Act defines "local exchange carrier" as any person that is engaged in the provision of telephone exchange service or exchange access.[9] Because Sprint is providing telephone exchange service and exchange access service, Sprint is meets the statutory definition of a "local exchange carrier" within the meaning of the Act.

Consolidated's main argument is that Sprint is not entitled to interconnection because TWC, rather than Sprint, is the "retail" provider serving the end user subscribers. Contrary to

[8] The term "telephone toll service" means telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service. §153(48).
[9] 47 U.S.C. §153(26).